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been satisfied before the proceedings in bankruptcy were instituted. *Held*, that a creditor, other than the one defrauded, was entitled (under the Bankruptcy Act, as amended Feb. 5, 1903), to oppose the discharge. *In re Harr* (1906), 143 Fed. Rep. 421.

This case is interesting because it is the first time this part of the statute has been passed upon in a reported case. § 14 b, 3, of the Bankruptcy Act provides that the court may discharge the bankrupt unless he has "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit. It was contended that this action could not be maintained because the debt, incurred by fraud, had been fully discharged before the proceedings in bankruptcy were instituted, and also that only the party defrauded could object to the discharge, but the court said "in order to sustain this contention the court would have to interpolate after the word 'person' the following: 'who is a creditor of the bankrupt at the time of his discharge.'" COLLIER ON BANKRUPTCY (Ed. 1905), p. 171, in discussing this section says: "In effect, the objection means, that where a creditor has been defrauded * * *, he has the option of interposing a bar to a discharge affecting all debts, or of permitting the discharge to be granted and then asserting his claim on after-acquired property on the ground that his claim is not affected by the discharge." The court's construction of this section would seem to be more in accordance with the generally liberal interpretation of the statute than is Mr. Collier's, which would limit the right to plead the misrepresentation in bar, to the creditor defrauded. The second remedy named by him is given by § 17 of the act. See, *Forsythe v. Vehmeyer*, 177 U. S. 177, 20 Sup. Ct. 623, 44 L. Ed. 723, 3 Am. Ban'r R. 807.

BANKS AND BANKING—RIGHT OF DRAWER OF CHECK TO STOP ITS PAYMENT.

—On presentation of a check for payment it was refused by defendant bank on the ground that the drawer of the check had ordered it held up because it had been obtained by fraud and there had been a failure of consideration. Defendant bank had sufficient funds of the drawer on hand to meet the check at the time of presentation; in this action by a bona fide holder, *Held*, a check on a bank operates, from the moment of delivery to the payee as an assignment "pro tanto" of the drawer's funds in bank, and so it is not essential that the drawee bank shall accept the check in order to fix upon it liability to pay the checkholder and to entitle the holder to sue for non-payment. Hence the drawer of this check could not countermand its payment when the check had passed into the hands of a "bona fide" holder. *Loan and Savings Bank v. Farmers' and Merchants' Bank* (1906), — S. C. —, 54 S. E. Rep. 364.

The weight of authority is overwhelmingly against this doctrine, which has been harshly criticised by both judges and text-writers. ZANE ON BANKS AND BANKING, § 147. Since the adoption of the Negotiable Instruments Law by Kentucky (1904) and Nebraska (1905) the only states holding to this doctrine are South Carolina, *Simmons v. Bank*, 41 S. C. 177; *Leaphard v. Bank*, 45 S. C. 569; and Illinois, *Munn v. Burch*, 25 Ill. 21; *Gage Hotel Co. v. Union Nat. Bank*, 171 Ill. 531; and possibly Texas, *First Nat. Bank v.*

Randall, 1 White and Wilson Civ. Cas., Ct. App., § 975. Contra, *Florence Min. Co. v. Brown*, 124 U. S. 385; *Nat. Commercial Bank v. Miller*, 77 Ala. 168; *Satterwhite v. Melczar*, 24 Pac. 184; *Colorado Nat. Bank v. Boettcher*, 5 Colo. 185; *Harrison v. Wright*, 100 Ind. 515; *Case v. Henderson*, 23 La. Ann. 49; *Exchange Bank of Wheeling v. Sutton Bank*, 78 Md. 577; *Carr v. Nat. Security Bank*, 107 Mass. 45; *Brennan v. Merchants' and Manufacturers' Nat. Bank*, 62 Mich. 343; *Dowell v. Vandalia Banking Ass'n*, 62 Mo. App. 482; *Creveling v. Bloomsbury Nat. Bank*, 46 N. J. Law (17 Vroom) 255; *First Nat. Bank v. Clark*, 134 N. Y. 368; *Bank of Marysville v. Wendischmuhlhauser Brew'g Co.*, 50 Ohio St. 151; *Saylor v. Bushong*, 100 Pa. St. 23; *Akin v. Jones*, 93 Tenn. 353. These cases hold to the doctrine on this point as laid down in *Florence Min. Co. v. Brown* (cited above) by the United States Supreme Court, "A check upon a bank in the usual form, not accepted, or certified by its cashier to be good, does not constitute a transfer of any money to the credit of the holder: it is simply an order which may be countermanded, and payment forbidden by the drawer, at any time before it is actually cashed. * * * It does not of itself constitute an equitable assignment." For further comment and citation on these two doctrines, see, CURRENT LAW, Vol. 3 (1904-5), p. 332, note; MORSE ON BANKING, 2nd Ed., 275; 30 L. R. A. 845; BUNKER'S NEGOTIABLE INSTRUMENTS LAW, ANNOTATED, 232.

BILLS AND NOTES—TRUSTEES FOR BENEFIT OF CREDITORS AS HOLDERS IN DUE COURSE—PRE-EXISTING DEBT CONSTITUTES VALUE.—The American Bank of Orange held defendant's note. Being in a failing condition the bank made an assignment of all its property, including this note, to the plaintiffs for the purpose of securing all its creditors. Plaintiffs brought suit on this note and defendant answered that the note had been altered so as to read "Payable, with interest." Plaintiffs replied that they are holders in due course without notice of the alteration. *Held*, the note was taken in the regular course of business and for value, and so under sub-sections 52 and 53, Va. Code, 1904, p. 1455, § 2841 a, plaintiffs are holders in due course and not subject to prior equities. *Trustees of American Bank of Orange v. McComb* (1906), — Va. —, 54 S. E. Rep. 14.

By a long line of decisions in Virginia it has been established that trustees under a deed of trust to secure antecedent debts are purchasers for value. *Chapman v. Chapman*, 91 Va. 397; *Witz, Biedler & Co. v. Osburn and Wife*, 83 Va. 230; *Evans v. Greenbrow*, 15 Grat. 153; *Skipwith's Ex'r v. Cunningham*, 8 Leigh 271. Connecticut holds otherwise; on the ground that such trustees do not take negotiable paper "in the regular course of business." *Roberts v. Hall*, 37 Conn. 205. There is diversity of decision in the different states on the question of a pre-existing or antecedent debt constituting "value" for the transfer of negotiable paper. That it constitutes "value" only when the debt is extinguished. *Iowa Nat. Bank of Ottumwa v. Sherman* (S. D.), 97 N. W. Rep. 12; *Henriques v. Ypsilanti Sav. Bank*, 84 Mich. 168; *Mayer v. Heidelberg*, 123 N. Y. 332. That it constitutes "value" though the paper is merely transferred as collateral to secure the pre-existing debt. *Payne v.*